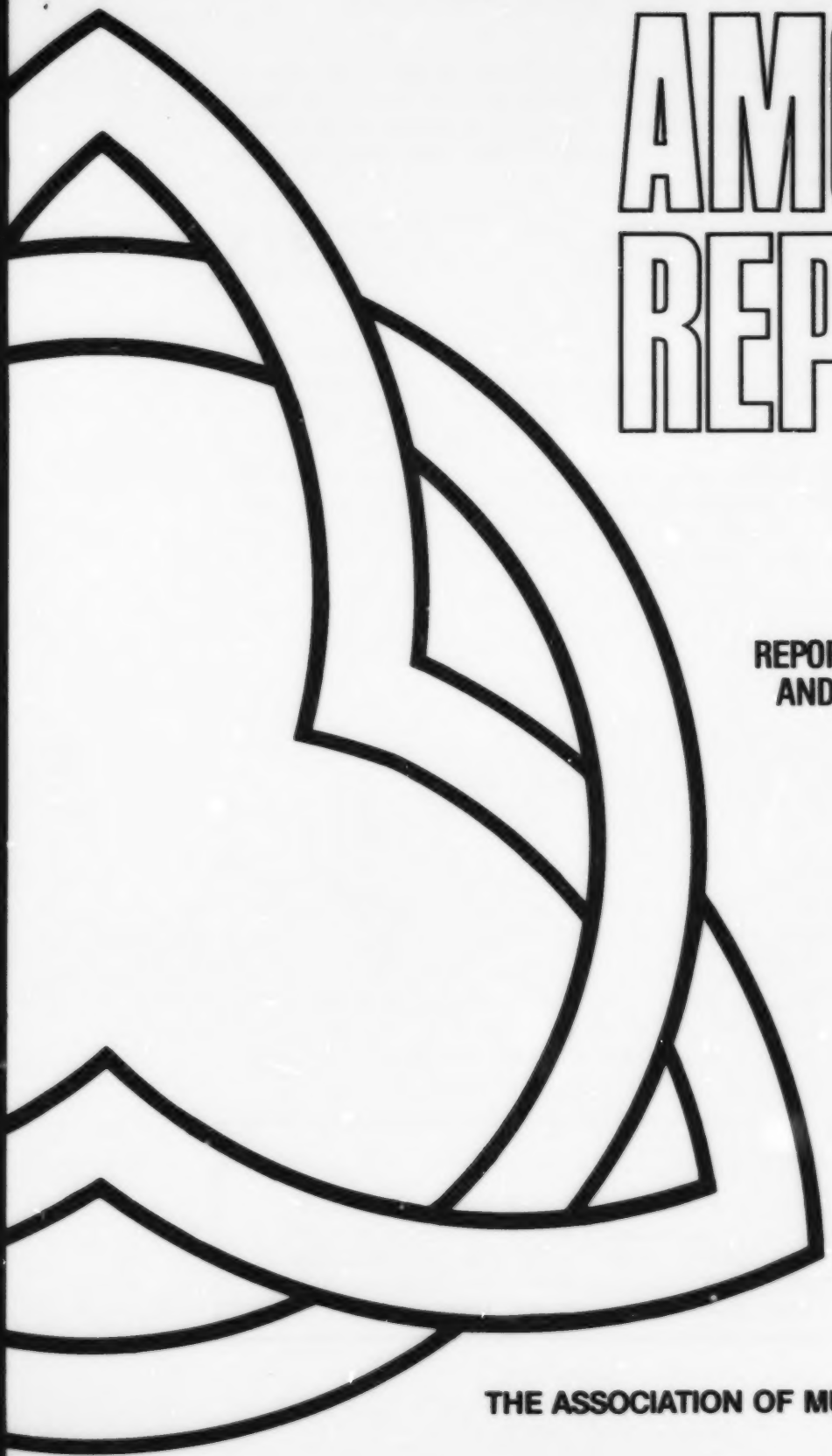

AMO REPORTS 85-5

REPORT ON THE DOG LICENSING AND LIVESTOCK AND POULTRY PROTECTION ACT

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
AUGUST 1985

86-02236/

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario

To the Municipal Clerk:

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AMO Report 85-5 "Report on the Dog Licensing and Livestock and Poultry Protection Act" was prepared by the Rural Section (ROMA) of AMO, approved by the AMO Board of Directors, and transmitted to the Honourable Jack Riddell, Minister of Agriculture and Food, and the Honourable Bernard Grandmaitre, Minister of Municipal Affairs on September 3, 1985.

REPORT ON THE DOG LICENSING AND LIVESTOCK AND POULTRY PROTECTION ACT

BACKGROUND

The Act was first enacted in 1863, prior to Confederation, as the Dog Tax and Sheep Protection Act. A series of amendments have witnessed its evolution through the Dog Tax and Livestock Protection Act and the Dog Tax and Livestock and Poultry Protection Act to its present designation in 1972. Further minor amendments have been made, the latest in October, 1981.

Since that time, a number of letters and resolutions have been dealt with by the Association and the delegates to various annual conferences. However, the Ministry has declined to take action and has, on several occasions, indicated the matters would be taken into consideration, but without setting a target date.

At the first meeting of the ROMA Executive Committee for 1985/86, on February 6th, 1985, the review of the Act was designated as a priority for the Section.

By resolution of the Executive Committee on March 28th, 1985, specific authorization for the review was given, to include consultation with the Ministry of Agriculture and Food.

On June 13th, the ROMA Agriculture and Food Committee convened to undertake the detailed review, in co-operation with representatives of the Ministry of Agriculture and Food. Candid discussions resulted in clarification on many points, to the benefit of the committee members and other participants.

THE ACT: The Dog Licensing and Livestock and Poultry Protection Act, R.S.O., 1980, Chapter 123, as amended by 1981, Chapter 31 and Regulations 244 and 245 R.R.O., 1980.

A clause by clause analysis of the statute was undertaken and it was determined that the majority of the provisions were appropriate and could not readily be improved upon.

It is then, only those Sections on which representation had been made to the Association of Municipalities of Ontario or a Section of AMO, or those that a committee member found specifically disturbing, that were selected for examination.

Perhaps it would be well to note that the review was undertaken on the premise that the Act would, for the most part, remain intact. That is to say, we were advised that dialogue had taken place between the Agriculture and Food and the Municipal Affairs and Housing Ministries regarding the transfer of the licensing of dogs and kennels to the Ministry of Municipal Affairs, probably under the Municipal Act, but no final commitments were made.

Throughout the Act, there are definitions [eg. Sections 1, 4(2), 6(2) and 8] which might well be amalgamated into one interpretations section. In doing so there seems to be a problem with the term "harbours a dog" [Section 1(c)] in that a resident may deny ownership of a dog yet the animal is obviously quite at home on the premises and falls into the category of being "harboured".

Also Section 1(d)(i) has a "Canadian only" connotation and should be amended to recognize all purebred animals. Perhaps in broadening this section, subsection (ii) might be eliminated.

Recommendation 1

Where possible, all definitions should be amalgamated into one interpretation section for easy reference.

Recommendation 2

The word "harbours" in Section 1(c) should be appropriately defined so as to include keeping, providing shelter, feeding, etc. so as to more appropriately relate the term to ownership and the applicability of the Act.

Recommendation 3

Amend Section 1(d)(i) so as to eliminate the "Canadian only" connotation - "purebred means registered or eligible for registration with a registered kennel club or association".

Recommendation 4

Delete Section 1(d)(ii).

Section 2(2) provides that "on payment of the license fee for a dog, the owner shall be furnished with a dog tag and shall keep the tag securely fixed

on the dog at all times until the tag is renewed or replaced, but the tag may be removed while the dog is being lawfully used for hunting deer in the bush".

The word "deer" was found excessively restrictive as a dog hunting any animal could become entangled due to the tag.

Recommendation 5

> **Section 2(2) be amended by deleting the word "deer" where it appears in the last line so that it would then read "...is being lawfully used for hunting in the bush".**

Section 2(3) provides for a 25 cent charge for each tag even though the preceeding section requires that a tag be supplied to the owners upon registration of the dog. The Section would appear superfluous unless it were intended to apply to a replacement tag in the event of loss, but more importantly the cost of tags is substantially in excess of 25 cents.

Recommendation 6

> **Delete Section 2(3) in its entirety and leave the price of any replacement tags to the discretion of the municipality.**

There are five separate sections dealing with fines, all of which provide for a maximum of $50 . The amount is not in line with fines in other statutes (eg. the Municipal Act - $2,000 ; the Dog Owners Liability Act - $2,000; the Pounds Act - $300). While several municipal resolutions have petitioned for the municipality to have the freedom to set unlimited fines, the Association was of the opinion that to be consistent with other statutes a ceiling was appropriate. Also, current provisions were no longer a deterrent and should be increased.

Similarly appeals were considered for municipalities to be permitted their own discretion in fixing the amounts charged for kennel licenses, as opposed to the current mandatory $25 . Too, the housing of purebred dogs is no longer simply a hobby for show purposes, but in many instances an extremely lucrative business. The Association suggests that kennel licenses should be left to municipal discretion because, as opposed to penalty provisions which require some degree of consistency, license fees should be totally under municipal jurisdiction.

Recommendation 7

Delete Sections 2(5), 4(3), 5, 6(3) and 22 and replace them with a single penalty clause which provides for a maximum fine of $300 for contravention of a by-law or other provisions of the Act.

Recommendation 8

Delete from Section 3, the figure of "$25" where it appears in the third line and insert in lieu thereof "whatever figure is deemed appropriate by the council of the local municipality".

Concern was expressed that there was no provision for entry upon premises for the purpose of determining whether a dog is kept, etc., and for inspection, especially in the case of a licensed kennel.

Recommendation 9

An entry clause be included in the Act - eg. "an officer or person acting in accordance with provisions of this Act or a by-law passed pursuant to the Act may, at all reasonable times and upon producing proper identification, enter and inspect any property".

Section 9 provides three circumstances when a person may kill a dog - 1) when killing or injuring livestock; 2) in a township or village when between sunset and sunrise it is found straying from the premises where it is habitually kept; 3) that is found straying at any time, and not under proper control, upon premises where livestock or poultry are habitually kept.

It is the last of these circumstances which a farmer in the Township of Adjala relied upon but found in a court of law that inasmuch as the dog was, when killed, in the process of leaving the premises, it was deemed to be no longer straying on the premises on which sheep were usually kept. According to the Ontario Statute Citator "neither at common law in or under this Act, is there legal justification or excuse for an owner of sheep, cattle, etc., to kill a maurauding dog which has left his premises after the need for protection of his animals has ended, [R v Elherington, [1963] 2 C.E.C. 230 (Mag. Ct.)]".

While the two decisions vary slightly, the fact is that if a dog is in the process of leaving or has left the premises, it is exonerated, even if caught in the act! The Ministry's position is that "the pertinent paragraph in the

Dog Licensing and Livestock and Poultry Protection Act is a clear and strongly worded section as it stands. The Ministry doubts that rewording the section would put a farmer in a stronger position. It is hoped that the Bradley Case will, in time, prove to have been an isolated case of narrow interpretation of the Section, and that in the future the spirit and intent of Section 9 of the Act will be recognized by the court".

We are of the opinion that a precedent has been set and will be the basis for future challenges in the courts. Were the word "straying" to be deleted from Section 9(c), the potential for splitting hairs, would be reduced.

Recommendation 10

> **Delete the word "straying" where it appears in the first line of Section 9(c) so that the Section would then read "that is found at any time and not under proper control, upon premises where livestock or poultry are habitually kept".**

Resolutions from the Township of King (adopted at the 1984 AMO Conference) and from the City of Sault Ste. Marie promote the transfer of responsibility for payment of livestock kills by dogs, to the Ministry in the same manner as for wolves - ie. Section 10(1).

The Ministry is firmly of the opinion that wild animals are the responsibility of the province and the municipality should assume the responsibility for damage by dogs. It is within the latter's jurisdiction to institute a programme of dog control and they are deemed to have some obligation in the process.

When deliberating the matter, the Association tends to agree.

Recommendation 11

> **That Section 10(1) remain intact and that the local municipality continue to be responsible for payment of compensation payable under the Act, for damage caused by dogs.**

A 1983 resolution from the Township of King, sought to have the basis for denial of claim by a municipality expanded [ie. Sections 10(2) and 11(4)]. The suggestion was that the Act was being used as an "insurance policy".

While the Ministry prefers not to put an "insurance" handle on the Act, it was, in fact, the intention of the legislation. For reasons set out earlier,

(ie. the municipality's obligations in the control of dogs) the Ministry believes that individuals should not have to insure their livestock against marauding dogs and the Act was designed to provide some monetary protection. Most insurance policies carry a provision that the insured is required to take advantage of the Act's provisions before making claim for insurance (usually over and above the regulation's maximum). To create an additional basis for denial of claim will undoubtedly increase insurance premiums to farmers to provide protection against predators.

Recommendation 12

That Sections 10(2) and 11(4) provide reasonable latitude for denial of claim by a municipality and that no change be initiated.

Section 11(6) provides that "the amount of damage for which the local municipality is liable shall not include damage incurred under the circumstances set out in clause 4(a), (b), or (c) and for which the municipality has denied liability in accordance with subsection (4)". If the claim is denied, no damage is awarded and the clause appears superfluous.

Recommendation 13

Delete Section 11(6).

A fee of $25.00, to be deposited with the Commissioner, when an appeal is made and refundable if the appeal is granted, is designed to eliminate any necessity for the awarding of costs. Since the amount is minimal it serves to reduce the potential for action to recover costs of an appeal, the provisions of the Section should be retained.

Recommendation 14

Section 11(9) be unchanged.

Sections 11(13) and 16(12) provide for a final appeal of the valuer's report through the county or district court. While the Township of Tosorontio, in particular, has had very negative experiences in that respect, it was felt the occurrences were not sufficiently common to warrant change. The only viable alternative was to make the decision pursuant to Section 11(9), (ie. appeal to

the Commissioner) final. This would deny an applicant his "day in court" and was not deemed desirable.

Recommendation 15

Retain the present appeals provisions.

Section 17 provides for the making of claims to the province for payment where kill or damage is determined to have been by wolves. The Town of Aurora suggests that the valuer's fee be included as part of the claim. The Ministry, in turn, acknowledges the request to be not entirely unreasonable but is of the opinion that the determination of the nature of the predator was intended to be the municipality's share in the overall responsibility under the Act.

When costs of damages by wolves are requisitioned from the province, there is no mechanism whereby the Commissioner may review or appeal the value the local valuer has assigned to the animal(s) killed or damaged. The Wolf Damage Assessment Board only has jurisdiction to determine, upon referral by the Commissioner, "whether or not the whole or any part of the damage referred to in the application was caused by wolves" [Section 20(2)]. Their assessment does not encompass a review of the values in the award.

Recommendation 16

That the valuer's fee be included in the claim, and be eligible for reimbursement by the province, where claim is made pursuant to Section 17 of the Act.

Recommendation 17

Provision should be included for the Commissioner to appeal the value, placed upon animal(s) by a local valuer, in the instance of a determination that damages were caused by wolves.

Regulation 244 sets out maximum amounts of compensation to be paid for various categories of livestock and poultry.

The Ministry indicated, that the provisions of the Regulation in this regard are being reviewed, especially in the case of fur-bearing animals and horses.

A resolution from the Township of Uxbridge promoted a maximum payable on fur-bearing animals, to one owner, in any year, be set at $1,000 . Inasmuch as AMO is not knowledgeable of values in this category, the matter should be dealt with further during review of amending legislation.

As for payments for horses, it was felt that the current maximums of $500.00 were not adequate regardless of the class of animal - ie. draught, quarter or show animals.

Recommendations 18

That compensation to be paid for a horse be increased to $1,000, maximum.

Regulation 245 provides for regulation of dogs at large in unorganized areas and should be embodied in the statute.

Recommendation 19

Include provisions of Regulation 245 in the Act.

CONCLUSION

Although the review exercise has been most enlightening and productive, the Association realizes that an update of the statute is not likely to be a priority of the government. Therefore, the Association of Municipalities of Ontario stresses to the government the need for revisions to the legislation.

Recommendation 20

That the Association of Municipalities of Ontario and ROMA, the Rural Section, in particular, have the opportunity to review any draft legislation, prior to its introduction in the Legislature.

SUMMARY OF RECOMMENDATIONS

1. Where possible, all definitions should be amalgamated into one interpretation section for easy reference.

2. The word "harbours" in Section 1(c) should be appropriately defined so as to include keeping, providing shelter, feeding, etc.

3. Amend Section 1(d)(i) so as to eliminate the "Canadian only" connotation - "purebred means registered or eligible for registration with a registered kennel club or association".

4. Delete Section 1(d)(ii).

5. Section 2(2) be amended by deleting the word "deer" where it appears in the last line so that it would then read "...is being lawfully used for hunting in the bush".

6. Delete Section 2(3) in its entirety and leave the price of any replacement tags to the discretion of the municipality.

7. Delete Sections 2(5), 4(3), 5, 6(3) and 22 and replace them with a single penalty clause which provides for a maximum fine of $300 for contravention of a by-law or other provisions of the Act.

8. Delete from Section 3, the figure of "$25" where it appears in the third line and insert in lieu thereof "whatever figure is deemed appropriate by the council of the local municipality".

9. An entry clause be included in the Act - eg. "an officer or person acting in accordance with provisions of this Act or a by-law passed pursuant to the Act may, at all reasonable times and upon producing proper identification, enter and inspect any property".

10. Delete the word "straying" where it appears in the first line of Section 9(c) so that the Section would then read "that is found at any time and not under proper control, upon premises where livestock or poultry are habitually kept".

11. That Section 10(1) remain intact and that the local municipality continue to be responsible for payment of compensation payable under the Act, for damage caused by dogs.

12. That Sections 10(2) and 11(4) provide reasonable latitude for denial of claim by a municipality and that no change be initiated.

13. Delete Section 11(6).

14. Section 11(9) be unchanged.

15. Retain the present appeals provisions.

16. That the valuer's fee be included in the claim, and be eligible for reimbursement by the province, where claim is made pursuant to Section 17 of the Act.

17. Provision should be included for the Commissioner to appeal the value, placed upon animal(s) by a local valuer, in the instance of a determination that damages were caused by wolves.

18. That compensation to be paid for a horse be increased to $1,000 maximum.

19. Include provisions of Regulation 245 in the Act.

20. That the Association of Municipalities of Ontario and ROMA, the Rural Section, in particular, have the opportunity to review any draft legislation, prior to its introduction in the Legislature.

APPENDIX "A": RESOLUTIONS

1985 RESOLUTIONS

AL-6

REQUEST TO ENACT LEGISLATION TO PROVIDE PROTECTION TO LIVESTOCK AND POULTRY PRODUCERS WHO KILL STRAY DOGS UPON THEIR PREMISES (85-030-2)

From: County of Simcoe

Whereas a sheep producer in the Township of Adjala, in the County of Simcoe, was convicted under Section 401(a) of the Criminal Code of Canada for having killed a stray dog upon his premises which was worrying his sheep; and

Whereas the sheep producer appealed the decision of the County Court and his appeal was dismissed; and

Whereas the Dog Licensing and Livestock and Poultry Protection Act of Ontario was intended to provide protection to farmers from such charges under the Criminal Code;

Therefore be it resolved that the Province of Ontario be petitioned to enact appropriate legislation which will ensure that livestock and poultry producers are allowed to shoot, without harassment and without being subject to prosecution, dogs which are not under proper control and found upon the premises of the producers; and

The Section 9(c) of the Dog Licensing and Livestock and Poultry Protection Act be amended by removing the word 'straying' so that the Section will read "that is found at any time, and not under proper control, upon premises where livestock or poultry are habitually kept"; and

Furthermore that the Association of Municipalities of Ontario be requested to make appropriate representation to the Province of Ontario for appropriate legislation.

Supplementary Information: A sheep producer in the Township of Adjala was convicted under the Criminal Code of Canada for shooting a dog that had been worrying his sheep. The sheep producer appealed the decision of the County Court but his appeal was dismissed. The judge in his reasons states, "However, the dog in question was shot while in the act of leaving the field, and to that extent could be said to be no longer straying on the premises on which the sheep were habitually kept." Obviously, this judgement is of great concern to all sheep producers. The judge also stated that Subsection 9(c) of the Dog Licensing and Livestock and Poultry Protection Act" suffers from the lack of clarification".

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